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NO. 84-1040

In the Supreme Court of the United States

OCTOBER TERM, 1984

SUCCESSION OF ALBERT JOSEPH CAZALAS

On Appeal From The
Supreme Court of the State of Louisiana

ORIGINAL BRIEF ON BEHALF OF APPELLEE TO AFFIRM

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Mrs. Julia C. Griot, Testamentary
Executrix of the Succession of
Francis Joseph Cazalas

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the laws of forced heirship of the State of Louisiana are unconstitutional under the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

2. Whether an action filed by a forced heir to reduce an excessive donation mortis causa is a personal action under the provisions of Article 428 of the Louisiana Code of Civil Procedure and abates if the forced heir dies before the action can be tried.

3. Whether a succession representative (an executor) of a deceased forced heir can bring an action on behalf of his succession to reduce an excessive donation mortis causa in the will of his pre-deceased son.

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STATEMENT OF THE CASE

This case involves an appeal by the Executrix of the Succession of Albert Joseph Cazalas from a judgment of the Civil District Court for the Parish of Orleans, State of Louisiana, which held that his father, Francis Joseph Cazalas was a forced heir under the laws of the State of Louisiana and entitled to one-third (⅓) of the separate property of the estate. That decision was affirmed by the Court of Appeal, Fourth Circuit, State of Louisiana and a Writ was denied by the Supreme Court of Louisiana.

The Executrix, Mrs. Mary Williams Cazalas, the wife of Albert Joseph Cazalas, had contended, and still maintains, that, by her husband's olographic will, he left both his community and separate property to her, and since he died childless, she was the universal legatee of all his property.

Francis Joseph Cazalas filed, while he was alive, an action against his son's estate, in the capacity of a forced heir, to reduce the excessive donation in his son's will by which he left his entire estate to his wife, Mrs. Mary Williams Cazalas. The father's position being that, under the laws and the Constitution of the State of Louisiana, he was a forced heir to the extent of one-third (⅓) of his son's separate property.

Before the father's action could be tried he died. His only survivors were his brother and a sister, Mrs. Julia C. Griot who was, by his will, his residuary legatee and she qualified as Executrix of his estate and filed an action on behalf of his estate against the estate of his son to reduce the excessive donation in his son's will.

Mrs. Mary Williams Cazalas contested the action taking the position that the laws of forced heirship of the State of Louisiana were violative of the Constitution of the United States, but even if the forced heir (the father) had a right to bring the action to reduce, that he died before the action could be tried and that this was a strictly personal action and abated by his death, and that the action of the Executrix of his estate had no right or cause of action to bring the action to reduce.

As noted above, the District Court, Court of Appeal and Supreme Court of Louisiana decided against Mrs. Mary Williams Cazalas and refused to stay the execution of the judgment against her. She now appeals to the Supreme Court of the United States.

SUMMARY OF ARGUMENT

The Constitution of the State of Louisiana provides

for forced heirship and leaves to the Legislature the determination of the class of forced heirs and the amount of the forced portion.

Under the present law of Louisiana only children are forced heirs. Formerly, the parent of a childless married decedent, survived by a wife, was a forced heir for a one-third (⅓) portion of his son's separate property. The wife receives all of the community property and two-thirds (⅔) of her husband's separate property.

If the decedent's will, as in the case at bar, made no provision for the forced portion of his father out of his separate estate, the father can and did bring an action against his son's succession to reduce the legacies in the will by the amount of the forced portion. It is to be noted that the abolition of forced heirship for parents became effective January 1, 1982. The son had died on February 8, 1981 before the abolition, however, of forced heirship for parents.

Decedent's father, Francis Joseph Cazalas, the forced heir, died before his action to reduce could be tried so under the authority of the Civil Code of Louisiana and the Louisiana Code of Civil Procedure, the Executrix of the father, on behalf of his estate, filed an action to reduce the excessive donation in the son's will. This was proper because under the law of Louisiana the forced heir was called to his inheritance immediately at the moment of death of the deceased person from whom he succeeded, and he transmits to his own heirs his own succession and that part of his succession which he inherited from the person (his son) whom he, himself, succeeded.

The forced heir died after he filed his action to reduce

the excessive donation mortis causa in his son's will, but before it could be tried. Nonetheless his action did not abate because it was not a strictly personal action but what is known as a heritable action which could be sued for by the Executrix of his estate. This right would not extend by the law and jurisprudence to creditors of his estate.

Forced heirship is not unconstitutional under the Fifth and Fourteenth Amendments to the United States Constitution. This Court has on several occasions in the past struck down as unconstitutional statutes which have deprived illegitimate children of their rights of inheritance on the ground that such statutes were discriminatory, but to our knowledge has never declared unconstitutional a State's orderly disposition of property and scheme of inheritance.

ARGUMENT

THE LAW OF LOUISIANA APPLICABLE TO FORCED HEIRSHIP OF A PARENT

On February 8, 1981, when Albert Joseph Cazalas died, Article 1494 of the Louisiana Civil Code provided as follows:

> Article 1494. Disposable portion when parents survive. Article 1494. With respect to separate property, donations inter vivos or mortis causa cannot exceed two-thirds of the property, if the disposer, having no children, leaves a father, mother, or both, provided that where the legal portion of the surviving father, mother, or both, is less than one-third the forced portion shall not be increased to one-third but shall remain at the legal portion.

Article 1495 of the Louisiana Civil Code provides:

> In the cases prescribed by the two last preceding articles the heirs are called forced heirs, because the donor cannot deprive them of the portion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them.

SEIZIN OF HEIRS

Upon the death of Albert Joseph Cazalas, his father, Francis Joseph Cazalas, immediately became vested with an undivided one-third (⅓) interest of his son's separate estate. This type of vestiture is known as seizin and becomes effective by operation of law. See the following articles of the Louisiana Civil Code on the subject.

> Art. 940. Seizin of heirs, intestate and testamentary.
>
> Art. 940. A succession is acquired by the legal heir, who is called by law to the inheritance, immediately after the death of the deceased person to whom he succeeds.
>
> This rule applies also to testamentary heirs, to instituted heirs and universal legatees, but not to particular legatees.
>
> Art. 941. Seizin by operation of law.
>
> Art. 941. The right mentioned in the preceding article is acquired by the heir by the operation of the law alone, before he has taken any step to put himself in possession, or has expressed any will to accept it.

> Thus children, idiots, those who are ignorant of the death of the deceased, are not the less considered as being seized of the succession, though they be merely seized of the right and not in fact.

Art. 942. Seizin: continuity of legal possession.

> Art. 942. The heir being considered seized of the succession from the moment of its being opened, the right of possession, which the deceased had, continues in the person of the heir, as if there had been no interruption, and independent of the fact of possession.

Art. 944. Seizin: transmission of succession rights to heirs of heir.

> Art. 944. The heir being considered as having succeeded to the deceased from the instant of his death, the first effect of this right is that the heir transmits the succession to his own heirs, with the right of accepting or renouncing, although he himself have not accepted it, and even in case he was ignorant that the succession was opened in his favor.

In the *Succession of Coco,* 171 So. 70 (1936) the Supreme Court of Louisiana had occasion to interpret and apply the provisions of Article 944 of the Louisiana Civil Code. We quote from the opinion at Page 74 of the Southern Reporter as follows:

> All that the provisions of the codal article mean is that as the ownership of the property of the succession is vested in the heir directly and immediately upon the death of the deceased, subject to his right to accept or renounce it, in the event the heir himself should die before exercising the right, he transmits to his own heir, either as the

whole or as only a part of his own succession the property acquired by him by inheritance, with the same privilege of accepting or renouncing which he enjoyed. The transmission of the succession with its attendant rights may be effected by the heir himself in a testament executed in the form prescribed by law, or by omitting to execute a testament he may permit the transmission to be made for him by the operation of law. Civ. Code, arts. 870, 871, 875, 884, 940, 941.

In other words, the right of the heir of the heir to accept or reject the succession falling to the latter is one which, under the codal article, is transmitted to him as a part of the succession of the heir of the person who dies first and not by inheritance of the succession of that person, which had already been transmitted to his own heir. The fact that the heir of the person first deceased has not accepted or received his inheritance before his own death does not make his heir the heir of the person from whom he has inherited.

ACCEPTANCE OF SUCCESSIONS

Francis Joseph Cazalas accepted the succession of his son, Albert, when he, Francis, filed a judicial proceeding to reduce the excessive donation made by his son in his will to his wife, Mary Williams Cazalas. By the rule that he filed while he was alive on August 6, 1982 against the Executrix of his son's estate, he demanded to be put into possession of his undivided one-third (⅓) interest in his son's estate. Since the son's will left everything to his wife, the father's judicial action was an action to reduce an excessive donation mortis causa.

The Civil Code of Louisiana on acceptance of a

succession by an heir, provides that the acceptance may be either express or tacit. We quote Article 988 of the Louisiana Civil Code accordingly:

> Art. 988. Simple acceptance; express or tacit.
>
> Art. 988. The simple acceptance may be either express or tacit.
>
> It is express, when the heir assumes the quality of heir in an unqualified manner, in some authentic or private instrument, or in some judicial proceeding.
>
> It is tacit, when some act is done by the heir, which necessarily supposes his intention to accept, and which he would have no right to do but in his quality of heir.

For cases interpreting the above articles of the Civil Code of Louisiana see *Cattle Farms, Inc. vs. Abercrombie,* 211 So.(2) 354 (La.App. 4th Cir. 1968), *Truxillo vs. Truxillo,* 11 La. Ann. 412 and *Bradley vs. Union National Life Ins. Co.,* 359 So.(2) 633 (La.App. 1st Cir. 1978).

HERITABLE RIGHTS OF FRANCIS JOSEPH CAZALAS IN HIS SON'S ESTATAE

As is apparent from the Articles of the Louisiana Civil Code above quoted and referred to, Francis Joseph Cazalas became a forced heir of his son's separate estate immediately upon his son's death. The father's intention to assert his heritable rights are readily apparent from the actions he took. In the first place, he demanded from the Administratrix (now the Dative Testamentary Executrix) of his son's estate, that he be recognized as a forced heir for

one-third (⅓) of his son's estate thereby asserting that the bequest in his son's will be reduced to cover his forced protion of the estate.

When the Administratrix of his son's estae refused to recognize the father's demands as a forced heir, the father, while he was alive, filed a suit on August 6, 1982 to reduce the excessive donation in his son's will and demanded to be put in possession as a forced heir. Before this suit, in the form of a rule against the Administratrix could be tried, Mr. Cazalas, the father, died. He did everything that was available to him under the laws of forced heirship before he died. His rights and the rights of his heirs by transmission are preserved.

Article 1504 of the Louisiana Civil Code provides:

> On the death of the donor or testator, the reduction of the donation, whether inter vivos or mortis causa, can be sued for only by forced heirs, or by their heirs or assigns; neither the donees, legatees, nor creditors of the deceased can require that reduction nor avail themselves of it.

By his actions, while he was alive, Mr. Francis Joseph Cazalas accepted the succession of his son of which he was already seized by operation of law.

When Francis Joseph Cazalas died his interest in his son's succession became a part of his own succession along with the other assets which he owned at the time of his death. It was necessary therefore to qualify a Dative Testamentary Executrix as the representative of his estate. This was done. His sister, who is named in his will as the residuary legatee of his estate, qualified as such in

Proceedings No. 82-17264 of the docket of the Civil District Court for the Parish of Orleans, entitled Succession of Francis Joseph Cazalas.

Article 3211 of the Louisiana Code of Civil Procedure provides:

> A succession representative shall be deemed to have possession of all property of the succession and shall enforce all obligations in its favor.

The official comment of the redactors of the Code of Civil Procedure under Article 3211 reads as follows:

> (a) This article is a departure from the law relating to seizin. The utility of the concept of seizin in Louisiana law is doubtful, since as a practical matter the succession representative has full seizin of all the property of the deceased.

Article 3196 of the Louisiana Code of Civil Procedure provides:

> In the performance of his duties, a succession representative may exercise all procedural rights available to a litigant.

Article 685 of the Louisiana Code of Civil Procedure provides:

> Except as otherwise provided by law, the succession representative appointed by a court of this state is the proper plaintiff to sue to enforce a right of the deceased or of his succession, while the latter is under administration. The heirs or legatees of the deceased, whether present or

> represented in the state or not, need not be joined as parties, whether the action is personal, real or mixed.

We quote from the official comment of the redactors of the Code under Article 685:

> In this code the succession representative, regardless of his title, represents both creditors and heir or legatees; and he has been granted powers to act for the benefit of the heirs or legatees, primarily if not exclusively. See Arts. 3198, 3211, 3221 and 3223 through 3228, *infra.*
>
> In the light of these developments the prior jurisprudence rules on the subject have become anachronistic. There is no reason today why a succession representative alone should not be able to enforce judicially all rights of the deceased, or of his succession, whether the action is personal, real or mixed. This article accomplishes this result, and the language employed is emphatic enough to indicate clearly the legislative intent to overrule all cases to the contrary.

See also 49 Tulane Law Review 1110, 33 Louisiana Law Review 199 (1973), *Estate of Richard vs. Richard,* 321 So.(2) 385 (La.App. 3rd Cir. 1975), *Jones vs. Dibert, Bancroft & Ross Ltd.,* 308 So.(2) 369 (La.App. 1st Cir. 1975), *Rice vs. Deville,* 240 So.(2) 379 (La.App. 3rd Cir. 1970), *Succession of Cuterer vs. Curtis,* 341 So.(2) 1209 (La.App. 1st Cir. 1976, *Writ refused* March 25, 1977).

HERITABLE RIGHTS DO NOT ABATE BY DEATH OF FORCED HEIR

Article 1997 of the Louisiana Civil Code provides;

> An obligation is strictly personal, when none but the obligee can enforce the performance, or when it can be enforced only against the obligor.
>
> It is inheritable when the heirs and assigns of the one party may enforce the performance against the heirs of the other.
>
> It is real when it is attached to immovable property, and passes with it into whatever hands it may come, without making the third possessor personally responsible.

The Executrix of Albert Joseph Cazalas' succession takes the position in her brief to this court that the action of Francis Joseph Cazalas to reduce the excessive donation in his son's will is a strictly personal right and that, under Article 428 of the Louisiana Code of Civil Procedure, his action to reduce the excessive donation is therefore abated by his death.

This is a fallacious argument and a misinterpretation of the Articles of both the Louisiana Civil Code and the Code of Civil Procedure.

The official comments under Article 428 of the Louisiana Code of Civil Procedure reads in part as follows:

> For the definition of strictly personal rights and obligations, see Art. 1997 of the Civil Code.

It is to be noted that the second, or middle paragraph, of Article 1997 of the Louisiana Civil Code, cited above, defines what a heritable obligation is. This definition fits exactly the provisions of Articles 942 and 944 of the Civil Code. Furthermore, it also fits in with

Article 1504 of the Civil Code which provides for the situation where a testator has made an excessive donation mortis causa and the forced heir of the testator or the heir of the forced heir of the testator brings an action to reduce the excessive donation. If such action was not heritable, how could the heir of the forced heir bring the action?

To the above effect also see *Bogart vs. Caldwell*, 66 So.(2) 629 (App. 1953), which holds that an "heritable obligation" is one from which there arises the righs of heirs of one party to enforce performance against the heirs of the other party.

Article 2315 of the Louisiana Civil Code with regard to survival of actions for damages and the jurisprudence under this article is not applicable to the issues in the case at bar and, therefore, we will not even discuss the article nor the cases under it.

The articles of the Civil Code and the jurisprudence which we cited above under Heritable Rights of Forced Heirs, and Article 1997 of the Louisiana Civil Code are controlling of the issues before this Court.

Appellant cites in her brief *Succession of Henican*, 248 So.(2) C.App. 4th Cir. (1971) and *Thompkins vs. Prentice*, 12 La. Ann. 465 (1857) as authority for her contention that the right to sue for a reduction of an excessive donation is a personal right and abates upon the death of the party who brings the action. These two decisions are not applicable to the case at bar because they involve suits by creditors of the debtor-forced heir who had not accepted the succession or filed an action to reduce an excessive donation mortis causa.

In the case at bar the forced heir (the father) filed an action while he was still alive to reduce an excessive donation mortis causa in his son's will. This was a personal action and not a suit by one of his creditors. Furthermore, his suit was a judicial acceptance of the forced portion due him from his son's estate.

The *Thompkins* and the *Henican* cases are in fact supportive of Appellee's position in the case at bar as will be noted from the following quotation in the *Henican* case at Page 388 of the opinion in the Southern Reporter:

> After a careful review of the jurisprudence of the state, we find that the Thompkins case has not been modified by subsequent legislation or jurisprudence and that the principle of law enunciated therein is dispositive of the case at bar. This court is aware of the fact that under the French Code Napoleon the result of this matter would be different—that a creditor would have the right to assert the action to reduce a legacy if his debtor refused to do so. However, the law of the state of Louisiana on this matter differs from the French. As was stated in Cox v. Von Ahlefeldt, 105 La. 543, 30 So. 175 (1900):
>
> (The legislature) framed the law by which we are governed in language which expressly authorizes the bringing of the action to reduce the donations of the testator within the disposable quantum 'by forced heirs, or by their heirs or assigns.' Rev.Civ.Code, art. 1504, and in this respect the Civil Code differs also from the Code Napoleon, which authorizes the bringing of such action by the forced heirs, or 'par leurs heritiers ou ayants cause'; the term 'ayants cause' including creditors, a class not necessarily included in the term 'assigns.' Code Nap. art. 921; Fuzier-

> Hermann, vol. 11, p. 526, No. 11; Rev.Civ.Code, art. 3556, verbo 'Assigns'; Thompkins v. Prentice, 12 La.Ann. 465. We have no authority, then, to exclude collateral heirs from the right here claimed because they were excluded by the Spanish law, nor to include creditors because they are included under the French law.
>
> Accordingly, unless and until the legislature sees fit to make the appropriate changes, the creditor of a forced heir has no right to assert the right of reduction of a legacy absent a specific assignment from the debtor.

CONSTITUTIONALITY OF FORCED HEIRSHIP IN LOUISIANA

Article 12, Section 5 of the Louisiana Constitution of 1974 states:

> Section 5. No law shall abolish forced heirship. The determination of forced heirs, the amount of the forced portion, and the grounds for disinherison shall be provided by law. Trusts may be authorized by law, and a forced portion may be placed in trust.

At the time of the death of Albert Joseph Cazalas on February 8, 1981, Article 1494 of the Louisiana Civil Code provided as follows:

> With respect to separate property, donations inter vivos or mortis causa cannot exceed two-thirds of the property, if the disposer, having no children, leaves a father, mother, or both, provided that where the legal portion of the surviving father, mother, or both is less than one-third the forced portion shall not be increased to one-third but shall remain at the legal portion.

Article 1494 was repealed effective January 1, 1982 so that now only children are forced heirs.

Appellant has requested this Court to declare the laws of forced heirship of Louisiana unconstitutional under the Fifth and Fourteenth Amendments to the United States Constitution. If this Court acceeded to her request the effect would be not only to wipe out the law of forced heirship as it pertained to her husband's father at the time of her husband's death, but to wipe out the laws of forced heirship for all children. This would have a devastating effect upon the orderly disposition of property and the statutory scheme of inheritance of the State of Louisiana.

Under Article 1493 of the Louisiana Civil Code which we quote below, it may readily be observed that a testator or disposer has a great deal of freedom to dispose of his estate. The restrictions on dispositions are applied to children only and are minimal:

> Donations inter vivos or mortis causa cannot exceed three-fourths of the property of the disposer, if he leaves, at his decease, one child; and one-half, if he leaves two or more children.
>
> Under the name of children are included descendents of whatever degree they be, it being understood that they are only counted for the child they represent.

Louisiana is the only state in the Union which has provisions in its constitution and laws for forced heirship on a limited basis. These provisions with regard to descent and distribution, are based upon the historical and traditional influence of the French, Spanish and Roman laws. Louisiana has been referred to since 1808 as a Civil Law State.

Louisiana is also one of the few states which has a community property system which affects the property and inheritance rights of its people.

To our knowledge neither the community property system nor the laws of forced heirship have ever been declared unconstitutional by this Court except in those instances pertaining to the inheritance rights of illegitimate children and the holding of the decisions was on the grounds of discrimination.

In *Trimble vs. Gordon et al,* 430 U.S. 762 (1977), the issue was the constitutionality of Sec. 12 of the Illinois Probate Act which allowed illegitimate children to inherit by intestate succession only from their mother, while legitimate children were allowed to inherit from both their mother and father.

The question was whether Sec. 12 violated the Equal Protection Clause of the Fourteenth Amendment by discriminating on the basis of illegitimacy and sex.

This Court concluded that the stautory discrimination against illegitimate children was unconstitutional and noted that it was the twelfth time since 1968 that the Court considered the constitutionality of alleged discrimination on the basis of illegitimacy. Some of the cases referred to and citaed in the opinion arose from the State of Louisiana.

The *Trimble* case turned strictly on the question of discrimination not upon a State's orderly disposition of property and statutory scheme of inheritance. To that effect we quote from the Court's opinion at Page 771 of the U.S. Reporter as follows:

> The orderly disposition of property at death requires an appropriate legal framework, the structuring of which is a matter particularly within the competence of the individual States. In exercising this responsibility, a State necessarily must enact laws governing both the procedure and substance of intestate succession. Absent infringement of a constitutional right, the Federal courts have no role here, and, even when constitutional violations are alleged, those courts should accord substantial deference to a State's statutory scheme of inheritance.

We urge this Court to uphold the constitutionality of the laws of forced heirship of the State of Louisiana.

CONCLUSION

It is respectfully submitted that judgment should be rendered in favor of Appellee and that this Court should rule that:

1. The judgment of the Supreme Court of Louisiana which affirmed the judgments of the Court of Appeal, Fourth Circuit, State of Louisiana, and the Civil District Court for the Parish of Orleans, State of Louisiana, be affirmed.

2. The laws of forced heirship of the State of Louisiana do not violate the Constitution of the United States of America, particularly the Fifth and Fourteenth Amendments thereof.

3. Francis Joseph Cazalas was a forced heir of his son, Albert Joseph Cazalas and that he, the father, while alive and following his death the legatees under the

provisions of his will, are entitled to one-third (⅓) of all the separate property belonging to the estate of Albert Joseph Cazalas.

Respectfully submitted,

_____

Girard J. Fernandez

CERTIFICATE OF SERVICE

I, Girard J. Fernandez, Attorney for Appellee herein, Mrs. Julia C. Griot, Dative Testamentary Executrix of the Succession of Francis Joseph Cazalas, and a member of the Bar of the Supreme Court of the United States, hereby certify that on January 2, 1985 I was served with a copy of Appellant's brief. I hereby further certify that on the 24th day of January, 1985, I served copies of Appellee's brief herein by depositing three copies in a United States Post Office with first class postage pre-paid, certified, return receipt requested, on all parties required to be served as follows:

1. Mary Williams Cazalas, Attorney for and Dative Testamentary Executrix of the Succession of Albert Joseph Cazalas, addressed to Mary Williams Cazalas, 1116 City Park Avenue, New Orleans, Louisiana, 70119.

2. Honorable William J. Guste, Attorney General of the State of Louisiana, addressed to Honorable William J. Guste, Attorney General of the State of Louisiana, 234 Loyola Avenue, New Orleans, Louisiana 70112.

3. Andrew G. Bucaro, Attorney For The Succession-Appellant, addressed to Andrew G. Bucaro, 6899 West End Boulevard, New Orleans, Louisiana, 70124.

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Dative Testamentary Executrix of the
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